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75-172

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

No. A-13

STATE OF OHIO,

Appellant,

v.

THEODORE TYMCIO,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF OHIO

MOTION TO DISMISS OR AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1975

No. A-13

STATE OF OHIO,

Appellant,

v.

THEODORE TYMCIO,

Appellee.

MOTION TO DISMISS OR AFFIRM

The Appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Ohio on the ground that it is manifest that the questions on which the decision of the cause depend are so insubstantial as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

THE STATUTE

This case involves the Ohio Supreme Court's interpretation of Section 2941.50(A) of the Revised Code of the State of Ohio, protecting the right of an individual charged with a crime to be represented by an attorney. The statute states that the court shall appoint an attorney if the defendant is "without and unable to employ counsel."

B.

THE PROCEEDINGS BELOW

The Ohio Supreme Court held in the opinion below (42 Ohio St.2d 39) that the trial court failed "to ensure that defendant was adequately represented by counsel," reversing the judgment of conviction for the charge of felonious assault and remanding the cause to the trial court for further proceedings consistent with the holding of the court.

II.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL QUESTION NOT PREVIOUSLY DECIDED BY THE COURT

At no point has this court held that a State does not have the right to expand the protections and guarantees provided by the Constitution of the United States through State law. Yet, taken in its most favorable light, the case presently before the Court claims that the Ohio Supreme Court's interpretation of Ohio State law is erroneous in that it expands the right to counsel as guaranteed by the Sixth Amendment to the Constitution of the United States as made applicable to the several States by the Fourteenth Amendment. The Sixth Amendment, as is the case with all constitutional protections, sets forth the minimum requirements that must be met by both the Federal and State Courts. Ohio has passed legislation [Ohio Revised Code Section 2941.50(A)] consistent with this mandate and in the present case the court has rendered an interpretation of same. The claim of the State is that this interpretation is an expansion of this Sixth Amendment right and for some reason this Court should refuse to allow the State to make such a ruling. That no substantial question has been presented is clear to the point that no further argument is necessary.

III.

CONCLUSION

WHEREFORE, the Appellee respectfully submits that the questions upon which this cause depend are so insubstantial as not to need further argument, and the Appellee respectfully moves this Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of the State of Ohio.

PROOF OF SERVICE

The attorneys for the Appellee hereby certify that copies of the foregoing Motion to Dismiss or Affirm were served upon Frank J. Cimino, Assistant Portage County, Ohio, Prosecuting Attorney, 247 South Chestnut Street, Ravenna, Ohio 44266, Attorney for Appellant, this 5th day of November, 1975, by First Class United States Mail.